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VIA FAX ((585) 613-4085) and EMAIL (kimberly_hardies@nywd.uscourts.gov)

Hon. Marian W. Payson
U.S. District Court
Western District of New York
100 State Street
Rochester, NY 14614

Subj: ESI Agreement Guidance Request
Zhao v. Keuka College, et al.
Civil Action No. 16-CV-6643

Dear Judge Payson:

At the Rule 16 conference in the above matter, the parties were directed to attempt to negotiate a mutually acceptable ESI agreement, or submit separate proposals for the Court to consider if agreement could not be reached. The parties have had several exchanges of proposals and conversation, but an agreement has not yet been reached.

In fact, from my perspective we have reached impasse, as the parties remain far apart and set in their respective positions.

I thus respectfully ask that the Court provide the parties with guidance as to the form of the proposals that it would like to receive, that the Court set a deadline for it to receive them, and provide such other and further advice as it might find helpful for the parties to solve this disagreement.

It may be helpful for the Court to know that defendants' have served discovery demands on October 10, 2018, while plaintiff has held off doing so in anticipation of resolution of this issue since such resolution will shape discovery moving forward.

I appreciate the Court's guidance in advance and look forward to receiving it. Thank you.

Respectfully yours,



Joseph A. Gawlowicz, Esq., Partner

JAG/jga

The parties may submit their proposals to the Court, accompanied by letters explaining their positions on issues in dispute.

*SO ORDERED
Marian W. Payson
wmj
10-12-18*

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